Thus, as of today, the only real competition that exists for a facilities-based cellular carrier is the other facilities-based cellular carrier in its geographic market.[42] The Commission itself has recognized that under these circumstances, the market for cellular service is not "fully competitive."[43]

Indeed, the Commission's conclusion in this regard is a gross understatement. A truly competitive market is characterized by the presence of numerous alternative providers of substitutable products or services. At best, cellular service within each carrier's service area is an oligopoly of two carriers. In such circumstances, the risk of anticompetitive behavior, even if tacit, can not be discounted.

The Commission has indicated that specific interconnection and related requirements may not be necessary for CMRS providers because such providers are distinguishable from the LECs, whose market power spurred past interconnection decisions, Second NPRM at ¶ 41. For example, CMRS providers do not control "bottleneck" facilities, according to the Commission.[44]

While there are clearly distinctions that can be made between licensed cellular carriers and the wireline LECs, the fact that only two carriers were initially licensed for any market has conferred significant competitive advantages on those carriers which

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[42] Although resale cellular carriers are beginning to enter the market, they have not yet made sufficient inroads to provide meaningful market discipline on the facilities-based incumbent carriers, thus highlighting the need for policies and rules to encourage their entry and viability.

[43] Mobile Services Second R & O, 9 F.C.C. Rcd. 1411, 1467, ¶ 138.

[44] Mobile Services Second R & O, 9 F.C.C. Rcd. 1411, 1499, ¶ 237.

must be taken into account in designing measures to encourage competitive entry. (See discussion in Section B.3., below.)

Moreover, under the Commission's own concept of controlling bottleneck facilities, the cellular carriers in each market control such facilities. The Commission has explained that "[c]ontrol of bottleneck facilities is present when a firm or a group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants," and "the structural characteristics of a market [are such] that new entrants must either be allowed to share the bottleneck facility or fail."[45]

> In addition, the Department of Justice has stated in the Divestiture Court that Cellular service is a relevant product market. The relevant geographic markets are those service areas in which the FCC has licensed two facilities-based cellular carriers to provide cellular service. At the current time, the holders of these cellular licenses, including McCaw, exercise market power in the provision of cellular service. These duopolies are characterized by rapidly growing demand and minimal price competition resulting in high margins to cellular carriers. . . . [Despite the Commission's resale policies,] resellers have not had substantial ability to influence wholesale pricing and accordingly have not substantially stimulated price competition for cellular services.[46]

In light of this overwhelming evidence, there can be no serious question that competition in CMRS markets, particularly the local cellular markets, is insufficient to allow the Commission to disregard regulatory safeguards for resale and competitive entry.

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[45] Competitive Carrier Rulemaking, 85 F.C.C.2d 1, 21-22 (1980).

[46] Complaint of the Department of Justice in United States v. AT&T, Civ. Action No. 1:94CV01555 (filed July 15, 1994) at ¶ 11.

TRA acknowledges that the Commission has recently issued a series of Reports and Orders denying the requests of a number of states for the qualified right granted by Section 332(c)(3)(B) of the Communications Act, 47 U.S.C. § 332(c)(3)((B) to regulate CMRS rates because "market conditions . . . fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory,"[47] on the grounds that the states had failed to demonstrate that insufficient competition existed in the relevant markets to protect against carrier misconduct, and therefore they had failed to satisfy the statutory standard.[48]

It would be inappropriate to attack those Orders in this proceeding. TRA submits, however, that the Commission's rejection of the states' evidence concerning competitiveness of the markets within their boundaries as inadequate to satisfy the statutory standard does not equate to a finding that those markets are fully competitive so as not to benefit from mandatory resale and interconnection obligations. Indeed, the presence and potential entry of resellers in some, if not all, of the petitioning states' markets enhances competition in, and therefore disciplines, those markets, thus weakening the states' positions that competition is inadequate to protect subscribers from unreasonable carrier practices.

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[47] E.g., Petition of New York State Public Service Commission to Extend Rate Regulation, PR Docket No. 94-108 (released May 19, 1995).

[48] Id. at ¶¶ 1, 67.

b. The resistance of incumbent CMRS providers to mandatory interconnection obligations illustrates the incorrectness of the Commission's assumption that natural marketplace forces will encourage resale.

In earlier stages of this and related proceedings, CMRS providers and parties representing such providers have opposed the adoption of rules prescribing specific obligations for CMRS providers to implement the Commission's resale interconnection policies in a meaningful, effective manner, most notably, direct interconnection requirements. See Second NPRM at ¶ 80. The arguments raised by these parties – basically increased costs for CMRS providers and technical infeasibility, id. at ¶¶ 80-81 – are reminiscent of arguments raised by AT&T and ultimately rejected by the Commission in numerous proceedings in which the Commission proposed resale, interconnection, customer premises equipment ("CPE") detariffing, and other regulatory measures to increase competition in various markets.

The opposition of the CMRS parties to direct interconnection demonstrates that the incumbent providers will not take actions to provide meaningful interconnection and other opportunities to resellers and other CMRS providers unless forced to do so by the Commission. Indeed, the Commission's stated assumption, Second NPRM at ¶¶ 28, 37, that, absent regulatory requirements, incumbent CMRS providers will enter into private agreements with resellers and other potential competitors for the interconnection of the parties' facilities, is naive, and is contradicted by the statement in an earlier proceeding of McCaw Cellular, which argued:

> Policy statements alone, unfortunately, are not sufficient to ensure that the public will benefit, or even that the desired interconnection will occur.

> . . . [H]istory equally illustrates that Commission policy pronouncements are not sufficient to realize competitive goals if implementation is left to negotiations between . . . competitors. Only by mandating the interconnection standards in detail and closely supervising the implementation process can the Commission ensure that its policies will be correctly implemented and its goals realized.[49]

Moreover, the pendency of at least three complaints by cellular resellers that incumbent facilities-based cellular carriers[50] refused to allow the resellers to interconnect their facilities on reasonable, non-discriminatory terms, is further evidence of the reluctance of incumbent providers to share their market power voluntarily with newcomers in the absence of specific Commission directives.

3. Even if Some Degree of Competition Is Present In Cellular Markets, Competitive "Headstart" Advantages Enjoyed By Incumbent Providers Are Sufficient Grounds for Imposing Specific Resale and Related Requirements.

Even in the presence of some competition, incumbent carriers that have been providing service in a market enjoy competitive "headstart" advantages over newcomers to the market that should be considered by the Commission in promulgating resale and related interconnection requirements for CMRS providers.

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[49] Reply Comments of McCaw Cellular Communications, Inc., in CC Docket No. 91-141 (filed Sept. 20, 1991).

[50] Cellnet Communications, Inc. v. New Par, Inc., d/b/a Cellular One, File No. WB/ENF-F-ENF-95-010, filed Feb. 16, 1995; Nationwide Cellular Service, Inc. v. Comcast Cellular Communications, Inc., File No. WB/ENF-F-ENF-95-011, filed Feb. 16, 1995 (both cited in Second NPRM at note 197); Continental Mobile Tel. Co. v. Chicago SMSA Limited Partnership, File No. E-92-02 (filed Oct. 9, 1991) (cited in Mobile Services Second R & O, 9 F.C.C. Rcd. 1411, 1499, n.481.

Indeed, the Commission has recognized the existence of these advantages in this and earlier proceedings. Second NPRM at ¶ 62 & nn. 107, 108.

As the Commission explained in the Second NPRM,

> [w]hen [we] established the wireline frequency set aside and filing requirements, [we] indicated that there was a possibility that wireline carriers would have an unfair "headstart" over non-wireline carriers in the introduction of cellular service to the public. In the cellular context, the term "headstart" generally refers to any potential competitive advantage that may be gained by one cellular carrier because it is granted a construction permit and begins providing service over its own facilities prior to its competitor providing service.

Second NPRM at n. 107.[51]

Considerable barriers to entry exist for parties seeking to enter the wireless market as a facilities-based carrier. First, the prospective carrier must obtain the required licenses from the Commission or from an existing licensee, if they are even available. The process of obtaining Commission authorization inevitably entails some degree of regulatory lag, particularly if the applications are opposed. Second, once the licenses are obtained, raising the substantial capital necessary to construct a system will involve further delay in getting to market and will impose considerable transactional costs. Third, once financing is in place, construction of and testing the

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[51] (citing Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Report and Order, 7 F.C.C. Rcd. 4006, 4007 & n.13 (1992) ("Cellular Resale Order"); Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 F.C.C. Rcd. 1719, 1721 (1991) ("Cellular Resale NPRM and Order")).

system interposes further delay in turning on service. Clearly, resale provides the only realistic source of additional potential competition in these markets for at least the near term.

Even where some competition exists in a market, the use of regulatory safeguards may be advisable where, as here, circumstance unrelated to market power alone, but attributable to an incumbent carrier's historical position in the market confer competitive advantages on the carrier for which regulatory measures are required to even the playing field. For example, in the Computer Inquiry proceedings,[52] the Commission employed regulatory safeguards to promote competition, initially, as a counterpoint to the potential abuse of AT&T's market power, and later, because of the competitive advantages AT&T and the RBOCs had attained by being the first carriers in their markets, which advantages were not significantly diminished by the emergence of competition in some markets.

In the Second Computer Inquiry Final Decision, 77 F.C.C.2d 384 (1980), the Commission recognized the role that carrier tariff restrictions play in thwarting competition. It analyzed the history of the customer premises equipment ("CPE") market, and observed that, in some segments of that market where competition was

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[52] First Computer Inquiry (Final Decision), 28 F.C.C.2d 267 (1971), aff'd in part sub nom. GTE Service Corp. v. FCC, 474 F.2d 724 (2d Cir. 1973), decision on remand, 40 F.C.C.2d 293 (1973); Second Computer Inquiry (Final Decision), 77 F.C.C.2d 384 (1980), mod., 84 F.C.C.2d 50 (1980), aff'd, 693 F.2d 198 (D.C. Cir. 1982); Third Computer Inquiry (Phase I Report and Order), 104 F.C.C.2d 958 (1986), mod. on recon., 2 F.C.C. Rcd. 3035 (1987), further recon. denied, 4 F.C.C. Rcd. 5927 (1989); Third Computer Inquiry (Phase II Report and Order), 2 F.C.C. Rcd. 3072 (1987), recon. denied, 3 F.C.C. Rcd. 5927 (1989).

minimal, "the lack of any significant competition . . . has been attributable not to any inherent monopoly characteristics, but to those artificial constraints imposed by carrier tariff restrictions which we have struck down as unlawful."[53]

The Commission has also recognized that, regardless of its market share, a carrier could use the substantial volume of network information available to it for anticompetitive purposes; therefore, the Commission required AT&T to provide such information nondiscriminately to other providers:

> [I]t is clear that carriers providing basic network service, whether they must enter a competitive market through a separate subsidiary or not, have the incentive and ability to withhold information to the detriment of competition and the communications ratepayer in that competitive market. Therefore we will extend to all carriers owning basic transmission facilities the requirement that all information relating to network design be released to all interested parties on the same terms and conditions, insofar as such information affects either carrier interconnection or the manner in which interconnected CPE operates.[54]

In Computer III, the Commission recognized that divestiture and emerging competition had not eliminated AT&T's ability to act anticompetitively, and it adopted certain safeguards, including "comparably efficient interconnection" ("CEI"), to promote the entry and growth of competing enhanced services providers, whose services could depend on use of AT&T's services and facilities. The Commission explained:

> We recognize that AT&T is increasingly subject to competition in the markets for its regulated offerings. Unlike the BOCs, it does not possess significant legally- protected monopoly facilities. However, we find that AT&T's presence is still sufficiently strong in interexchange basic service markets, and particularly in certain key areas such as those for

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[53] 77 F.C.C.2d at 440.

[54] Computer II (Memorandum Opinion and Order), 84 F.C.C.2d 50, 82-83 (1980).

> interexchange basic service and terrestrial private lines, that there is a substantial likelihood that AT&T offerings of integrated enhanced services could result in the distortions to competition and loss of efficiency that CEI is designed to prevent.[55]

Even if some competition exists in the CMRS markets, particularly the local cellular markets, the "headstart" competitive advantages enjoyed by the incumbent facilities-based cellular carriers justifies the imposition of regulatory safeguards for competition, including specific switch-to-switch interconnection requirements for the benefit of resale carriers and other competitors.

C. To Further Promote Resale of Commercial Mobile Radio Services and Other Forms of CMRS Competition, the Commission Should Prescribe Direct Interconnection Obligations for All Operating CMRS Providers and Declare a Policy of Promoting Direct Interconnection Opportunities by PCS Providers.

Section 201(a) of the Communications Act requires all common carriers subject to the Act to "establish physical connections with other carriers" where the Commission "finds such action necessary or desirable in the public interest." Section 201(b) requires that the "charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable." 47 U.S.C. § 201(a), (b).

Interconnection of reseller switches with CMRS providers' facilities is not only necessary to allow CMRS resellers to compete in a meaningful way with incumbent

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[55] Third Computer Inquiry (Phase I Report and Order), 104 F.C.C.2d 958, 1026-27 (1986).

providers,[56] it is also desirable in the public interest because of the variety of benefits that meaningful resale has been shown to provide in numerous Commission proceedings. Thus, under Section 201, the Commission should order CMRS providers, at least cellular carriers, to permit direct interconnection of resellers' and other competitors' switches.[57]

Moreover, applying the Hush-a-Phone test that the Commission has invoked in past interconnection and resale proceedings,[58] it is apparent that reseller requests for direct interconnection are just and reasonable because they will protect a "telephone subscriber's right reasonably to use his telephone in ways which are

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[56] Absent a mandatory direct interconnection obligation, the only recourse for a party unsuccessfully seeking interconnection would be to bring a complaint proceeding against the offending carrier under Section 208 of the Act – not a reasonable option. Furthermore, interconnection of a CRMS reseller with the local exchange landline network – which has been proffered as an alternative to CMRS interconnection, and which is immediately available – is simply not economically feasible for CMRS resellers, because this option would require them to route their traffic from the MTSO through the LEC to the reseller switch, and then back through the LEC to the point of termination, incurring charges along the way.

[57] Because of the nascency of the PCS market, it may be premature to prescribe specific interconnection obligations for PCS providers. If so, the Commission should at a minimum announce a firm policy that PCS will be required to provide direct interconnection to resellers and other competitors pursuant to specific directives to be adopted at a later time.

[58] See supra notes 24-28 and accompanying text. Although the Hush-a-Phone test was originally promulgated as a test of reasonableness of a carrier's actions with respect to a telephone subscriber, in Resale and Shared Use – Private Line Service, and Resale and Shared Use – Public Switched Network Services, supra notes 12 and 23, the Commission expanded application of the test to carrier actions with respect to other carriers, i.e, resellers. See Resale and Shared Use – Public Switched Network Services, supra, note 23, 83 F.C.C.2d 167 at 171, ¶ 8.

privately beneficial without being publicly detrimental.'"[59] As discussed at length above, the Commission has widely recognized that resale offers the telephone subscriber numerous benefits.[60]

Direct interconnection would permit cellular resellers to lower their costs (which now are largely determined by the incumbent cellular carriers) and provide enhanced and other services (presently provided generally only by the incumbent carriers) to their subscribers, including validation, billing, voice storage and retrieval, and many others.[61] Direct interconnection can also be expected to have the same beneficial effects on the CMRS market as were described by the Commission in the Expanded Interconnection proceedings, e.g., reduced prices, wider ranges of choices, more efficient operation, and deployment of new technologies.[62] Clearly, these are benefits to which the public is reasonably entitled. In addition, direct interconnection enhances the commercial viability of the interconnecting reseller and benefits the facilities-based carrier providing interconnection by directing more business to the carrier.

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[59] Hush-a-Phone, 238 F.2d at 269 (quoted in Resale and Shared Use -- Public Switched Network Services, 83 F.C.C.2d 167 at 171, ¶ 8).

[60] See, e.g., Resale and Shared Use – Private Line Service, and Resale and Shared Use – Public Switched Network Services, supra notes 12 and 23; see also Second NPRM at ¶ 84.

[61] Cf. Expanded Interconnection with Local Telephone Company Facilities, 7 F.C.C. Rcd. 7369 (1992), at 7380, ¶ 14.

[62] Expanded Interconnection with Local Telephone Company Facilities, 9 F.C.C. Rcd. 5154 (1994) at 5158, ¶ 8; Expanded Interconnection with Local Telephone Company Facilities, 7 F.C.C. Rcd. 7369 (1992), at 7380, ¶ 14.

Moreover, there has been no reliable showing that imposing a direct interconnection obligation on CMRS providers -- particularly cellular providers -- would be "publicly detrimental." The CMRS parties that have claimed that the costs of providing mandatory direct interconnection would be overly burdensome ignore other instances of mandatory interconnection, where the carriers have been permitted to recover their costs involved in providing interconnection.[63] TRA submits that parties seeking direct interconnection should be required to pay their share of the direct costs of the carriers with whose facilities they interconnect, just as parties taking advantage of expanded interconnection offerings by the LECs must compensate the LECs for the service.[64]

With respect to incumbent carriers' claims that direct interconnection is technically infeasible, at least one party in a earlier stage of this docket, the National Cellular Resellers Association, has filed with the Commission a detailed description of

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[63] E.g., Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, 7 F.C.C. Rcd. 7369 (1992), recon., 8 F.C.C. Rcd. 127 (1992), vacated in part and remanded sub nom. Bell Atlantic v. FCC, No. 92-1619 (D.C. Cir. June 10, 1993), recon., 8 F.C.C. Rcd. 7341 (1993); Expanded Interconnection with Local Telephone Company Facilities, Transport Phase I, CC Dkt. No. 91-141, 8 F.C.C. Rcd. 7374 (1993).

[64] See, e.g., Expanded Interconnection with Local Telephone Company Facilities, 9 F.C.C. Rcd. 5154 at 5157, ¶ 5; see generally Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport, CC Dkt. No. 94-97, Phase I, FCC 95-200 (released May 11, 1995). Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, 7 F.C.C. Rcd. 7369 (1992) at 7472, ¶ 220.

the technical manner in which direct interconnection could be achieved.[65] Thus, objections as to technical infeasibility appear to be fabricated. It is worth noting, moreover, that in a number of earlier Commission proceedings mandating some form of interconnection, the incumbent carriers argued strenuously but unsuccessfully that implementation of the interconnection obligations would be technically infeasible and/or would harm the network.[66]

The rates, terms and conditions of interconnection must be just and reasonable and not unreasonably discriminatory under Sections 201(b) and 202(a) of the Communications Act. Experience teaches, however, that absent regulatory

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[65] Comments of the National Cellular Resellers Association ("NCRA") in CC Dkt. No. 94-54, RM-8012 (filed Sept. 12, 1994) at 2, n.4, and Exhibit A; Reply Comments of NCRA in CC Dkt. No. 94-54, RM-8012 (filed Oct. 13, 1994) at 6-7.

[66] E.g., Bell System Tariff Offerings of Local Distributing Facilities for Use by Other Common Carriers, 46 F.C.C.2d 413, 429 (1974), aff'd sub nom. Bell Tel. Co. of Penn. v. FCC, 503 F.2d 1250 (3d Cir. 1974); Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services, 29 F.C.C.2d 870 ("Specialized Common Carrier Services"), recon., 31 F.C.C.2d 1106 (1971), aff'd sub nom. Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975); Hush-a-Phone Corp. v. US, 238 F.2d 266 (D.C. Cir. 1956).

compulsion, cellular carriers do not adhere to these principles.[67] Thus, regulatory safeguards are required to ensure compliance by the incumbent carriers with their responsibilities as common carriers subject to Title II.

For the sake of "regulatory parity," CMRS providers – at least cellular providers – should be subject to the same interconnection obligations as the wireline LECs.[68] In

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[67] See Expanded Interconnection with Local Telephone Company Facilities, CC Dkt. No. 91-141, 7 F.C.C. Rcd. 7369 (1992) at 7472, ¶ 220; see also supra notes **47** (suggesting that the dominance of McCaw and the other facilities-based cellular carrier in their local market, has resulted in high demand for service, minimal price competition, high margins for incumbent carriers, and limited entry of resellers which entry has not caused a marked effect on stimulating price competition); **48** (State of New York – like seven other states – proffers evidence and arguments to the Commission to establish that certain CMRS markets are not sufficiently competitive to allow marketplace forces alone to prevent carrier disregard of their substantive obligations – but Commission finds evidence presented insufficient to satisfy the statutory standard for allowing some state regulation of CMRS); and **51** (identifying several complaints by resellers alleging unjust, unreasonable, and discriminatory actions by incumbent cellular carriers – including denial of reasonable nondiscriminatory terms of interconnection); see also supra note **33** and accompanying text, (quoting Second NPRM at ¶ 86):

> CMRS providers may have incentives to refuse to enter into resale arrangements with competing carriers. For example, even though carriers are permitted to charge and realize a profit from selling service to resellers, the return is higher when they provide the retail service directly to end users. Thus, absent a Commission-imposed resale obligation, it is our tentative view that carriers might very well refuse to permit other providers to resell their service. Therefore, we tentatively conclude that a mandatory general resale requirement is necessary because it will serve as an effective means of promoting competition in the CMRS marketplace.

[68] In the House Report accompanying H.R. 2264, 1993 OBRA, the Committee on Energy and Commerce explained that one of the purposes of the legislation – which, among other things, defined the class of CMRS providers and made explicit that they are common carriers subject to the substantive provisions of Sections 201 and 202 of the Act – was to achieve "regulatory parity" among services that are substantially similar. H.R. Rep. No. 103-111, 103d Cong., 1st Sess., at 259-260.

addition, imposing mandatory interconnection obligations on CMRS providers would seem to carry out the Congressional intention to encourage interconnection: "The Committee considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network."[69] This Congressional priority has become a statutory obligation of the Commission. Section 332(c)(1)(B) of the Communications Act provides that, "[u]pon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act." 47 U.S.C. § 332(c)(1)(B). The Commission's apparent distaste for regulatory requirements that would achieve this mandate in a consistent, across-the-board fashion, and its preference for addressing interconnection issues on a case-by-case basis, might comply with the letter of the statute, but certainly would seem to be contrary to its spirit, which requires the Commission to order common carriers to establish physical connections with other carriers.

If the Commission elects to impose regulatory safeguards that would be likely to effectuate Congressional intent, it should, among other things, require CMRS providers – at least cellular carriers – to: (1) permit resellers and other competing providers to directly interconnect their switches at the CMRS provider's Mobile Telephone Switching Office ("MTSO") or an equivalent CMRS provider switch; (2) provide

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[69] Id. at 261.

adequate information to enable the party seeking interconnection to propose a technical plan that would be acceptable to both parties; (3) provide rates, terms and conditions of interconnection, even if set through private negotiations, that are just, reasonable, and not unreasonably discriminatory; (4) file with the Commission interconnection agreements containing such rates, terms, and conditions; and (5) require CMRS providers to unbundle their service offerings, including airtime and ancillary service charges, to permit the public to benefit fully from resale of CMRS services.

Although the Commission has decided, pursuant to Section 332(c)(1)(A) of the Act, to forbear from exercising its tariff review authority under Section 203, the Commission should require CMRS facilities-based providers to file with the Commission all interconnection agreements. Just as the tariff filing process has long been held to be the core of Title II's regulatory system in that it enables the Commission and private parties to evaluate carrier rates, terms and conditions and thereby provide an enforcement mechanism and a safeguard against unlawful provisions, so too could publicly filed interconnection agreements help to ensure that the Commission's pro-competitive resale policies are being pursued.

III.

CONCLUSION

The Commission has repeatedly recognized the importance of resale to the successful implementation and realization of its pro-competitive initiatives. Expressing a frequently echoed sentiment, the Commission has noted:

> Resale carriers . . . essentially act to enforce good industry performance. If a particular service is not being provided adequately to consumers, these carriers often act to fill the void. The resale carriers also have the potential to undermine price discrimination schemes by the existing dominant carriers by engaging in arbitrage.[70]

Commission vigilance in enforcing its pro-competitive policies is essential to the emergence and growth of the CMRS resale industry.

The Commission thus should, among other things, require CMRS providers – at least cellular carriers – to: (1) permit resellers and other competing providers to directly interconnect their switches at the CMRS provider's Mobile Telephone Switching Office ("MTSO") or an equivalent CMRS provider switch; (2) provide adequate information to enable the party seeking interconnection to propose a technical plan that would be acceptable to both parties; (3) provide rates, terms and conditions of interconnection, even if set through private negotiations, that are just, reasonable, and not unreasonably discriminatory; (4) file with the Commission interconnection agreements containing only such rates, terms, and conditions; and (5) require CMRS providers to unbundle their service offerings, including their airtime and

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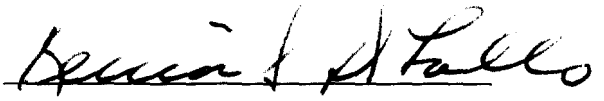
[70] Id., 85 F.C.C.2d 1 at ¶82.

ancillary services charges, to permit the public to benefit fully from resale of CMRS services.

Respectfully submitted,

TELECOMMUNICATIONS RESELLERS ASSOCIATION

By: 

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